

1 A He seldom billed me for telephone conversations of
2 any type, which is unusual for most lawyers.

3 Q How is it that you have a clear recollection of
4 Monday, March 21, having a conversation with Mr. Huggins?

5 A Well, one of the things that I most vividly recall
6 is that things were not coming together well when I was in
7 Melbourne from, from what I had seen, and I started making
8 phone calls when I got back to Miami to find out what was
9 happening with things. I tried, tried to understand why what
10 we thought was going to occur hadn't occurred, and my only
11 contact with, with the town over there was either through
12 Mr. Huggins, through Mr. Schell, or through Mr. -- the
13 gentleman up at the, at the motel at that time.

14 Q Well, what I, what I'm really asking for here is in
15 terms of Monday, March 21, is this something that you're
16 drawing from your memory or is there some, is there some
17 document, or is there something which --

18 A I, I'm drawing it from memory, from telephone
19 conversations. I don't have a letter to that effect. I
20 suppose I could have requested one but I didn't do so. We, we
21 had telephone conversations sometimes on a daily basis, none
22 of which are transcribed.

23 JUDGE LUTON: Okay, let's, let's stop right there
24 for a moment.

25 WITNESS: I'm sorry.

1 JUDGE LUTON: It's pretty clear that this is
2 speaking from recollection. Meyers recalls --

3 WITNESS: Right.

4 JUDGE LUTON: -- at least one conversation so --

5 MR. SHOOK: No, I was just asking if there was
6 something that he had looked at in order to place in time, you
7 know, why, why he has such a clear recollection of March 21.

8 WITNESS: Well, in, in writing much of this material
9 and preparing everything, of course, I've kept a calendar in
10 front of me and, and related back to it as dates and so forth,
11 because I knew about when things took place and to try to
12 clarify my, my writing here I put in the dates but I believe
13 those dates are accurate. It was the Monday following the
14 week that I was in Melbourne, and when I look on a calendar I
15 find the Monday following the week that I was in Melbourne is
16 the 21st.

17 BY MR. SHOOK:

18 Q All right, I'd like you to refer to page 75 of Mass
19 Media Exhibit 4. Focus please on answers 6 and 6(a). Just
20 read them to yourself right now. With respect to answer 6(a)
21 and the statement, "The tower actually arrived on the 14th of
22 March," do you recall how it was that you gained that
23 knowledge?

24 A I believe when I talked to Huggins on the 21st of
25 March that they had knowledge that something had been sent

1 there, and the knowledge came to me that it had been the wrong
2 one, which also fit the situations I had observed the previous
3 week while in Melbourne. The sequence of events that took
4 place there started to make sense with the conversation I had
5 on the 21st.

6 Q All right, if the tower arrived in Chatom on the
7 14th of March, when would it have left Melbourne, just 1 day
8 earlier?

9 A Something like that. Probably was the previous day.
10 From Melbourne, Florida to Chatom, Alabama is about a 12-hour
11 drive at 55 miles an hour. It's mostly Interstate.

12 Q Just want to clarify something with respect to
13 Attachment 57, which also, I believe, is Mass Media Exhibit 3.
14 There is going to be a fair amount of duplication here, I'm
15 afraid. Am I correct that you're the sole author?

16 A That is the -- 57, that's the FAA Notice? Yes, I
17 am.

18 Q And this was a document that you prepared while you
19 were in Melbourne.

20 A No, I think I prepared this when I returned back to
21 Miami. No, I couldn't have. I did that before. I guess I
22 did it at that same time. I'm looking at the date at the
23 bottom of this. I'm sure I mailed it after I went back to
24 Miami. But it is dated the 18th, I'm sorry, and that would
25 have been Friday of that week. I think the reason why it's

1 dated that date and was sent in on that time was because when
2 I went to the, to the -- the contractor's property, there were
3 no more tower sections left. I could only assume that he
4 delivered them.

5 Q Now, going back to Attachment 56, the Exhibit 2
6 portion, the statement is made in the third paragraph that the
7 FAA form is attached, and that it has been filed. Now, in
8 the documents that we received from you and that we have as
9 exhibits here, the FAA form is not attached. Do you have a
10 recollection as to whether the FAA form was, in fact, attached
11 to this --

12 A I think it was originally, and I don't know why it
13 isn't -- hasn't been later, but when I, I didn't -- was
14 unaware of that even until you brought it to my attention,
15 because I'm sure when we made the original filing. I think it
16 was attached. Oh, and, yeah, it, it, it's because it --

17 Q Well, now help again with something.

18 A I, I don't -- of course, I don't have what you now
19 have in the FCC files here but I believe it was originally
20 settled at that.

21 Q Well, we have your extension application being
22 signed on the 16th of March.

23 A Um-hum.

24 Q The -- I understood from your testimony that nothing
25 further had been done with this document subsequent to the

1 16th of March, but look at the Notice of Actual Construction
2 or Alteration. That bears a date of March 18th, 2 days later.

3 A Okay, my --

4 Q And --

5 A -- my only explanation for this --

6 JUDGE LUTON: Well, you haven't got a question yet.
7 Let him ask a question.

8 WITNESS: I'm sorry.

9 BY MR. SHOOK:

10 Q And the document as written here says that the FAA
11 form is attached and that it has been filed.

12 JUDGE LUTON: How could a document --

13 WITNESS: You're absolutely right, and I don't, I
14 don't --

15 JUDGE LUTON: -- not yet prepared, not been in
16 existence, have been filed? How could it have been attached
17 if it had not been prepared yet? That's the question.

18 WITNESS: I, I don't, I don't recollect why it was
19 but I'm -- I believe at the time we did send a copy of this to
20 the FCC. Now why it's not -- you have me, I understand why,
21 because I'm sure I did that. I cannot explain that at this
22 point, I'm sorry.

23 JUDGE LUTON: That is a toughie.

24 WITNESS: In, in this respect I can only state that
25 I would have had no reason to, to not send it.

1 BY MR. SHOOK::

2 Q Now, if I understand your testimony correctly, by
3 the 1st of April you knew that the Jampro divider had not been
4 sent, the trailer had not been delivered, the tower had not
5 been delivered, the local power company had not begun --

6 A That's correct.

7 Q -- to string any lines to your site. Why did you
8 not tell the Commission that none of these things had
9 occurred?

10 A Well, I did but it was later than April and I think
11 the reason why the delay came into this in my reporting was
12 because here I am working alone trying to now repair the
13 damage, and it, it, it gets to the point where it's a little
14 bit difficult to try to fix things that aren't going well and
15 then stop and, and make a report to the Commission at the same
16 time. It, it -- I'm on the run, I'm trying to do something
17 about our problem. It seriously was -- I was in serious
18 trouble and I knew it.

19 Q But --

20 A And it was, it was -- then had become a chase to try
21 to repair the damage.

22 Q All right --

23 A Finally, finally in May when I ascertained that I
24 was unable to make the appropriate repairs in a timely
25 fashion, I filed the document that I did.

1 Q You're referring to --

2 JUDGE LUTON: What about the damage that was being
3 done to your position with the Commission by your not
4 reporting these matters? You weren't trying to repair that.
5 Apparently, you put that in a different category of damage,
6 something that presumably would go undetected if you were able
7 to repair the other damage. That is to say, get the equipment
8 and cover up all of the mistakes and omissions. Then this
9 damage that had been done to your position with the Commission
10 might never have become known. Is that the position you took?
11 You say you were trying to --

12 WITNESS: No, absolutely not. Absolutely not.

13 JUDGE LUTON: -- you were trying to repair the
14 damage, but you weren't, it seems to me, you weren't trying to
15 repair the damage done to the Commission's processes.

16 WITNESS: Well, when, when one is working alone, you
17 try to assign priorities and, obviously enough, if, if the --
18 if there is more serious damage to one area than to another,
19 you, you attempt to make the repairs to the most serious
20 damage first.

21 JUDGE LUTON: Is it correct --

22 WITNESS: Not, not to say the Commission was not a
23 priority, please don't misinterpret me.

24 JUDGE LUTON: Well, I'm about to. Is it correct to
25 say, then, that it was a deliberate choice on your part not to

1 | inform the Commission of these matters?

2 | WITNESS: In part you're right, but the other part
3 | of that is because I had assigned a priority to try to repair
4 | the damage and then come back and do the paperwork.

5 | JUDGE LUTON: You viewed the Commission's interest
6 | only in receiving certain paperwork as opposed to being
7 | informed properly about what was actually taking place?

8 | WITNESS: No, I don't view it that way at all.
9 | Again, as I said, it was a -- I, I thought it was a matter of
10 | priority to try to do what I could and then follow it up with
11 | the paperwork and what had been changed.

12 | JUDGE LUTON: Okay. All right.

13 | WITNESS: I'm, I'm not, I'm not -- was not trying to
14 | hide anything. I simply was trying to use the hours I had
15 | available to me to get as much done as, as possible as soon as
16 | possible.

17 | JUDGE LUTON: I have to ask whether you're trying to
18 | hide or not. I hope you understand because that's what the
19 | Designation Letter suggests

20 | WITNESS: I, I don't believe I had any reason to
21 | hide. I've, I've never had a reason to hide anything and I
22 | certainly made enough errors with reporting on logs and, and
23 | so forth when I thought something was correct and went back
24 | later and, and fully wrote the description of my error, and
25 | it's been reviewed many times by field inspectors, and they

1 look at one and they say, "Well, what did you do?" and I say,
2 "Well, if you look down here you'll see where I realized that
3 what that was there was not correct and here is what -- and
4 here is the action we took to correct the problem."

5 JUDGE LUTON: All right.

6 WITNESS: I just don't -- I don't have a reason to
7 hide it.

8 BY MR. SHOOK:

9 Q Mr. Meyers, I'd like you to focus on Attachment 59.
10 We talked about this a little bit earlier this morning. This
11 was the first year's payment for the lease for the Chatom
12 site, correct?

13 A Yes, it is.

14 Q And you'll notice that it bears a date of May 10.

15 A That's correct.

16 Q Can you tell us what it was that triggered your
17 finally signing the lease on May 10 and mailing the check on
18 May 10?

19 A I, I just don't recall what the, what the actual
20 situation was that caused us to delay, whether it was because
21 I was attempting to construct the station, finding the
22 problems that I was having, trying to make good the problems,
23 trying to do everything else, and it was one of those things
24 that we delayed. It could have been that we were a little
25 short on cash on the day that it was signed and agreed to;

1 allowed me 30 days to make up the difference. I don't recall
2 specifically why.

3 Q There is a good deal --

4 A There was a delay but I don't recall why.

5 Q All right.

6 A It had no bearing on the validity of the lease.
7 That has been demonstrated a number of times.

8 Q Well, that's --

9 A Being the March 1st date.

10 Q That's neither here nor there. We know that the
11 lease was signed on behalf of the Trust on March 7, 1988,
12 right?

13 A That's correct.

14 Q We have an understanding there. Was a signed copy
15 of that lease signed by the Trust sent to you in March of
16 1988?

17 A I believe it was, yes.

18 Q But reasons -- but whatever the reasons are, which
19 you do not now recall, you did not sign on behalf of Benchmark
20 for another 2 months.

21 A For some reason and I don't -- I just don't know
22 why. There probably was an excellent reason at the time but I
23 don't recall what it was.

24 Q Now, during the month of April 1988, what steps, if
25 any, did you take to get a trailer to the Chatom site?

1 A Well, of course, I was trying to make contact again
2 with the same man I had dealt with, which turned out to be a
3 useless effort. I reviewed other choices. I believe at one
4 point Mr. Brelsford and I went down to another dealer on the
5 highway there in South Miami. He had a similar situation, and
6 we went and looked at several trailers there. Then I think
7 the reason why we didn't take theirs was simply because of the
8 cost of sending it up there.

9 Q Now, ultimately, though, you did send a trailer to
10 Chatom, correct?

11 A Yes, I did. This was one that we, we actually
12 owned, or I actually owned.

13 Q And where was that trailer located?

14 A I had it stored at Melbourne, Florida at a
15 residence.

16 Q You rented a truck in Miami on the 14th of May?

17 A Yes, I did, from Ryder Truck.

18 Q And proceeded to drive up to Melbourne?

19 A I went to Melbourne; I grabbed my brother who went
20 with me and he packed up his goods because he was out of work
21 and out of a home, and I told him, I said, "I'm putting you to
22 work," and we proceeded to Melbourne, and then picked up the
23 trailer from there, and drove overnight over to Chatom.

24 Q What precipitated your action in taking the trailer
25 which you already owned from Melbourne to Chatom?

1 A It was sort of a last resort. We, we were unable to
2 make any other deal to buy what we wanted to put in over there
3 at the time, and in order to attempt to repair the damage, I
4 elected to take use -- take what I had available and put it on
5 the site, and get it so we could actually get into operation.

6 Q All right, so you left Miami on the 14th of May.
7 You had previously, on the 10th of May, sent a check that you
8 drew on an account in Miami.

9 A Um-hum.

10 Q Would I be correct that during the period May 10 to
11 May 14, you were in Miami?

12 A Yes.

13 Q Would I also be correct that prior to May 10, even
14 back to the beginning of the month, you were in Miami?

15 A I think I was, yes.

16 Q That's where you have your regular daytime job,
17 right?

18 A Yes.

19 Q So you were in Miami from the 1st to the 14th of
20 May, 1988.

21 A I think I was.

22 Q And you spent the period May 14 to May 19 traveling
23 to and from Miami --

24 A To Melbourne.

25 Q -- through Melbourne, to Chatom?

1 A Yes.

2 Q And back.

3 A And back, and then returned to, to Chatom for a few
4 more days after that. The truck costing us something like
5 \$75.00 a day I didn't want to keep it any longer than I had
6 to.

7 Q When you drove to Chatom in May 1988, try to
8 describe for us the time sequence. You left Miami on the 14th
9 of May and then what happened after that?

10 A You, you mean time by time and the day, or, or --
11 I'm sorry, I'm --

12 Q Well, each day, basically.

13 A I guess I left Miami sometime in the -- like, 9
14 o'clock in the morning or something like that; drove to
15 Melbourne. We spent several hours there collecting the
16 trailer and loading a satellite antenna, which I was also
17 taking with us, and from there we struck out up I-95, got just
18 to south side of Jacksonville and had one flat tire. Had to
19 change the tire on the trailer, had to pull it into a service
20 station, a truck service station near St. Augustine. Got the
21 tire fixed, proceeded on up to Jacksonville and then across --
22 started across I-10. This is probably evening time by that
23 time and stopped for dinner, maybe something like that, and
24 proceeded west on I-10. We reached a rest stop just inside
25 the Alabama border something like 2 o'clock in the morning,

1 maybe later; pulled over to the side and slept for a couple of
2 hours.

3 JUDGE LUTON: Mr. Shook, do you have a particular
4 question in mind, something sharper than the one that you've
5 asked, for a general recitation of "what you did for several
6 days"? We're getting all kinds of stuff that I'm not sure is
7 not relevant to anything, like "we went into a rest stop, and
8 then a restaurant to have dinner" and all of this. Do you
9 have something specific in mind as though --

10 MR. SHOOK: Yes, I do, Your Honor.

11 JUDGE LUTON: Then how about asking that?

12 MR. SHOOK: Yes, sir.

13 BY MR. SHOOK:

14 Q When did you arrive in Chatom?

15 A It was the following day, maybe --

16 Q So it would have been May 15th?

17 A May 15th -- you know, probably 10 o'clock in the
18 morning, something of that -- it was, it was before lunch.

19 Q Did you take the trailer immediately to the site?

20 A Directly to the site, went right through town with
21 it.

22 Q What did you do with it at the site?

23 A Located it where we had intended to have the larger
24 unit put in there, and that's where it remained until a couple
25 of years ago.

1 Q So it would be your testimony that as of the 15th of
2 May, sometime during the day, the trailer was located on the
3 site.

4 A Yes, sir.

5 Q Did you have occasion to go to the Chatom site on
6 the 16th of May, the following day?

7 A Yes, I did.

8 Q What did you do when you were there?

9 A Did some site preparation work on the trailer itself
10 as far as taking the wheels off, getting it down onto cement
11 blocks, setting it up basically for a more or less permanent
12 installation.

13 Q Did you do any work relative to the trailer on the
14 17th of May?

15 A I think I did, yes, clean up work and locate some
16 equipment there and so forth.

17 Q Did you do any work on the trailer at the site on
18 the 18th of May?

19 A I don't believe I did. I think when I left my
20 brother we were at the site. We had gone out to the site in
21 the morning and I left him out there, and he was -- had
22 instructions to continue on with some work on the trailer, but
23 I had left. I was trying to return the truck back to Miami.

24 Q Once the trailer was taken to the Chatom site, was
25 it ever moved?

1 A Was it ever moved?

2 Q Yes.

3 A Not until, I think, 1990. Once, once we filed for
4 the St. Stephens site of the upgraded assignment, we gave up
5 the lease the following, I think, March. That was the year
6 that the NAB had a convention in Atlanta, and I went through
7 Chatom on the way to Atlanta to remove and clean up the old
8 site.

9 Q I want to refer you to Attachment 61. Had you
10 called or written to Antenna and Tower Service, Inc., in order
11 to generate this proposal?

12 A I -- somebody gave me their name and I called them
13 immediately on the phone to, to see what I could get. They,
14 they were the closest people at hand that could supply tower
15 equipment, as I understood it at the time.

16 Q So your recollection would be that this telephone
17 call took place on May 19 when you returned to Miami?

18 A It was probably within a day of that, something like
19 that, yes. Probably, it, it most -- and definitely had to be
20 when I got back down there because I didn't make it from
21 Chatom. I had no, no immediate easily telephone access from
22 where I was there.

23 Q You understood this document to be an offer that
24 Antenna and Tower Service was making to you in terms of
25 construction of a tower?

1 A I believe that at the time when we, when we talked
2 to the gentleman I expressed to him what our needs were,
3 including purchasing a tower, including getting it shipped to
4 the site, and installed. And I think that's the nature of his
5 quote, and --

6 Q Did you ever follow up on that quote?

7 A I think I had some other telephone conversations
8 with him subsequent to, to this quote being received by us.
9 In the meantime, I had located another tower which was a lot
10 less money than this.

11 Q Did you ever have any intention of utilizing this
12 Antenna and Tower Service, Inc.?

13 A Once I located the second tower, no.

14 Q But prior to that time you --

15 A Prior to that time, I was trying to put together
16 what we had to do to get it. And the second tower is there to
17 this very day.

18 Q Please refer to page 30 of your testimony, that
19 first paragraph that begins, "On May 20, you returned to
20 Chatom." Do you see that?

21 A Yes, I do.

22 Q Now, am I to understand, then, that you drove to
23 Chatom, came back to Miami on the 19th of May, dropped off --

24 A The truck.

25 Q -- the truck?

1 A Virtually was there long enough to take to take a
2 shower and --

3 Q The next day --

4 A -- put the -- take the mail out of the mailbox, and
5 throw it in the front office, and jump in the car, and go
6 right back up there. It virtually was a turn-around trip.

7 Q And it was on May 21 that you and your brother
8 contacted the power company?

9 A Yes, and that's when we first found out about the,
10 the need for a right-of-way easement, and why they had not
11 proceeded with the work.

12 Q Although you knew prior to May 21 that no work had,
13 in fact, been performed.

14 A When I went to the site it was very apparent.

15 Q Please refer to Attachment 62. Did you prepare this
16 document in Miami?

17 A I believe I did.

18 Q You signed it on May 26th?

19 A I believe I did; yes, I did.

20 Q But you didn't mail it until May 30?

21 A I believe 26th was a Friday.

22 Q Well, we could certainly check that but --

23 A The 30th being a Monday that we have already
24 determined.

25 Q Correct, Memorial Day as a matter of fact, right?

1 A Not traditional but the celebrated one, yes, sir.

2 Q And you had to do something special on that day in
3 order to actually mail this document to the Commission.

4 A I, I prepared it and took it directly to the airport
5 mail facility, which was the only one that would be open on a
6 holiday. In fact, it's open 24 hours a day.

7 Q What, if anything, prompted you to submit, or to
8 prepare, I should say, the Attachment 62 on or about May 26,
9 1988?

10 A Well, as I have related to the Judge, that in the
11 order of priorities I had reached a point where I thought I
12 could accurately reflect what was going on. Up until that
13 point it was a very loose situation. We didn't -- I just -- I
14 simply don't believe I could have accurately indicated what
15 had happened and what, what we had attempted to do to repair
16 the damage.

17 Q With that in mind, please turn to Exhibit 1 of
18 Attachment 62, the second paragraph, first sentence, which
19 reads, "Since the date of this filing," et cetera. Was it
20 accurate to say that several changes have occurred? Is that
21 what you should have said?

22 A I'm sorry --

23 Q If you need the time to read through the entire
24 document to familiarize yourself with it, go ahead.

25 A Well, I, I'm -- you know, in keeping in light of

1 the -- what I had filed before, and what I had believed what
2 was going to occur during the time that, that -- between the
3 time I filed and the time that the expiration of the
4 construction permit was to occur, I, I related that in that,
5 in that light, "several changes have occurred." In other
6 words, things that were supposed to happen didn't, and these
7 are the changes that have occurred during that time, which is
8 what we're doing.

9 Q Well, is there -- maybe I'm missing it. Is there
10 some place in this document where it actually tells the
11 Commission that you said had happened, had not happened?

12 A Oh, no, I, I don't believe so. I think that it's
13 trying to relate the fact that what we reported had not
14 happened. And that, you know, what, what we reported there,
15 there had obviously been a change because it did not happen.

16 Q Moving on to the next paragraph, the third sentence
17 of that paragraph, which reads, "The original trailer was
18 damaged during the delivery attempt, and although repairs were
19 attempted" et cetera. Where did you acquire the information
20 that repairs had been attempted?

21 A The one telephone conversation I had with the
22 trailer dealer's associate. He led me to believe that an
23 attempt had been made, that the trailer was coming apart, they
24 had attempted to repair it and couldn't get it to the site,
25 and therefore they had aborted the attempt, and that was based

1 on -- that was what this is based on.

2 Q Moving on to the next paragraph relative to the
3 delay of the local power company to deliver power to the site,
4 the second sentence there reads, "Local weather conditions
5 have pulled there limited crews away," et cetera. Now, isn't
6 it true that local weather conditions had absolutely nothing
7 to do with the power company not having strung power lines to
8 the site?

9 (End of Tape 3; Start of Tape 4.)

10 COURT REPORTER: Go ahead.

11 JUDGE LUTON: Are we past the clear spot?

12 COURT REPORTER: Yes.

13 JUDGE LUTON: Okay.

14 WITNESS: I cannot say that they did not have an
15 effect on it. When we arrived, they had not performed work.
16 Their excuse was that they had not had a right of way;
17 however, I think that there is a reasonable possibility
18 because of the limited operation that they had over there, and
19 the fact that during that time of the year they have a lot of
20 rain and weather problems, they may not have -- they may have
21 even mentioned to us the fact that there was also -- they
22 couldn't proceed because of weather problems and taking their
23 crews off to do repair work after lightening strikes and so
24 forth, which are very severe.

25 BY MR. SHOOK:

1 Q Well, I don't doubt that there --

2 A So I, I, I can't, I can't say that it didn't have a
3 relationship to it, and I, and I put it in here probably as a
4 comment more than -- an observational comment.

5 JUDGE LUTON: Say that again? You put it in this as
6 a what? I'm sorry.

7 WITNESS: As an observational comment because
8 someplace in that description I, I know that even after that
9 we, many times, talked about the amount of problems that they
10 would have with the crews available, which only, I think,
11 consisted of two trucks for two counties, that they were
12 unable to do some jobs that would normally take a power
13 company an afternoon would spend over 3 or 4 days because they
14 would no sooner get started with a job, the rains would come
15 up and the storm would knock out part of the grid, and they'd
16 just have to drop everything and go.

17 BY MR. SHOOK:

18 Q Well, but isn't it a fact that the local power
19 company was not even going to begin to do work to string power
20 lines to your Chatom radio site --

21 A This, this was their primary reason.

22 Q What was --

23 A That they, they could not do anything because of the
24 lack of a right of way approval, but I, I believe in the
25 course of conversation they, they related weather problems to

1 us, whether, whether they affected our specific application or
2 not, I don't know and I would say in retrospect it appears not
3 to have done so, but I think in conversation with them that
4 this was brought out. It's a primary concern for small power
5 companies.

6 JUDGE LUTON: You're saying that local weather
7 conditions appear now not to have affected Benchmark's
8 concerns at the time.

9 WITNESS: I, I can only --

10 JUDGE LUTON: Speaking now.

11 WITNESS: I can only speculate now that I don't
12 believe that it did.

13 JUDGE LUTON: Okay.

14 WITNESS: Specifically.

15 JUDGE LUTON: But when this was written you took the
16 opposite position.

17 WITNESS: I, I believe what information they had
18 provided me may have had some effect on it.

19 JUDGE LUTON: Okay, so now you're suggesting that
20 the statement, the written statement is -- shouldn't perhaps
21 be as definite and certain as it appears to be. After all, it
22 does say, "Local weather conditions have pulled their limited
23 crews away from our requirements to restore existing service."
24 What you really mean to say is that "weather conditions may
25 have pulled" --

1 WITNESS: Well, let me, let me --

2 JUDGE LUTON: -- "the crews away."

3 WITNESS: Let me restate what I think may have
4 occurred. It could have been that they told me that one of
5 the reasons why they had failed to notify us is that they had
6 been involved with repair work after storm weather, and our
7 particular installation, because it was new, had not received
8 the, the priority that it should have.

9 JUDGE LUTON: Did they tell you this or they may
10 have told you that? You guessing now, speculating, or are you
11 reciting what you know to be a fact?

12 WITNESS: I, I believe it came up in discussion.

13 JUDGE LUTON: Oh.

14 WITNESS: But I cannot prove it.

15 JUDGE LUTON: It may have come up in -- how did it
16 come up in -- it may have come up in -- it's very difficult
17 to, to understand what you're saying here --

18 WITNESS: Yes.

19 JUDGE LUTON: -- with these observational comments.
20 "It may have been this, it may have been that; it could have
21 been this, it could have been that." I don't know what to
22 believe.

23 WITNESS: It's been 6 years, Your Honor.

24 JUDGE LUTON: I understand, it's very difficult.

25 WITNESS: And many telephone conversations, and

1 particularly under the stress that we were in. I'm trying,
2 trying to do my best to relate to you what I think took place
3 6 years ago, and why I wrote something 6 years ago.

4 JUDGE LUTON: Am I now justified in believing that
5 the view you took 6 years ago, expressed in writing, is more
6 likely to be the way that you intended for it to be at the
7 time you wrote the paper, as opposed to an explanation of
8 what's written 6 years later about what may have been?

9 WITNESS: I, I tried in this document here because
10 of where we were and the problem we had, and I knew where we
11 were, that I tried to reflect accurate information.

12 JUDGE LUTON: Right.

13 WITNESS: And I related to, to the Commission what I
14 believed to be at the time accurate information.

15 JUDGE LUTON: So that 6 years --

16 WITNESS: I am, I am now forced to speculate that
17 the reason why I stated some of the things the way I did was
18 because I, in some course of conversation, learned about the
19 situation at hand and why somebody else did something or did
20 not do something.

21 JUDGE LUTON: Okay, it's a very important matter,
22 Mr. Meyers, because, you know, it, it would be easy to take,
23 to take the view without some clear understanding of such as
24 what you have stated, that this attempt at recasting of things
25 is simply a matter of convenience to Benchmark. I don't want